

875—32.11 (92) Civil penalty calculation. The labor commissioner shall follow the provisions of this rule when calculating civil penalties for violations of this chapter or Iowa Code chapter 92 as amended by 2009 Iowa Acts, House File 618. The labor commissioner may refer a violation to the appropriate authority for criminal prosecution in addition to assessing a civil penalty.

32.11(1) *Counting the number of violations.* Each item of inaccurate information on each permit shall be a separate violation. Each day that each child works at a time not listed on the permit, works on a day not listed on the permit, works at an occupation not listed on the permit, works without a permit, works on a prohibited day, works at a prohibited time, or works in a prohibited occupation shall be a separate violation for the purpose of penalty calculation.

32.11(2) *Determining whether a violation is a repeat violation.* The higher penalty amounts outlined in subrules 32.11(3) through 32.11(5) for repeat instances may be assessed by the labor commissioner if citations regarding the earlier instance or instances are final action and occurred less than five years before.

32.11(3) *Permit violations.*

a. Inaccurate information on a street trades permit, migrant labor permit, or work permit. Insignificant misspellings and typographical errors shall not be considered inaccurate information. A repeated instance of inaccurate information may result in a higher penalty even if the earlier instance or instances of inaccurate information involved a different fact. If a child is killed while working and the child's permit lists the wrong age for the child, the civil penalty shall be \$10,000 for each instance. Otherwise, the civil penalties for inaccurate information on the applicable permit are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	Warning letter
Second	\$100 civil penalty
Third	\$200 civil penalty
Fourth	\$500 civil penalty
Fifth	\$1,000 civil penalty
Sixth	\$2,500 civil penalty
Seventh	\$5,000 civil penalty
Eighth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

b. Working outside a permit. When a child is working outside the days, times or occupations listed on the street trades permit, migrant labor permit, or work permit, and the day, time or occupation the child is working is also prohibited, the labor commissioner may assess civil penalties under this subrule and subrule 32.11(4) or subrule 32.11(5) as applicable. If a child is killed while working outside the days, times or occupations listed on the applicable permit, the civil penalty shall be \$10,000 for each instance. Otherwise, the civil penalties for working outside the days, times or occupations listed on the applicable permit are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$100 civil penalty
Second	\$250 civil penalty
Third	\$500 civil penalty
Fourth	\$1,000 civil penalty
Fifth	\$2,500 civil penalty
Sixth	\$5,000 civil penalty
Seventh	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

c. Working without a permit. When a child is working without a required permit, and the day, time or occupation the child is working is also prohibited, the labor commissioner may assess civil penalties under this subrule and subrule 32.11(4) or subrule 32.11(5) as applicable. If a child is killed while working without a required permit, the civil penalty shall be \$10,000 for each instance. Otherwise, the civil penalties for working without a required permit are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$250 civil penalty
Second	\$500 civil penalty
Third	\$1,000 civil penalty
Fourth	\$2,500 civil penalty
Fifth	\$5,000 civil penalty
Sixth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

32.11(4) Time violations. If a child is killed while working on a prohibited day or at a prohibited time, the civil penalty shall be \$10,000 for each instance. Otherwise, the penalties set forth in this subrule shall be applied.

a. The civil penalties for working less than 15 minutes before or after an allowed time are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	Warning letter
Second	\$100 civil penalty
Third	\$200 civil penalty
Fourth	\$500 civil penalty
Fifth	\$1,000 civil penalty
Sixth	\$2,500 civil penalty
Seventh	\$5,000 civil penalty
Eighth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

b. The civil penalties for working on a prohibited day or for working 15 minutes or more before or after an allowed time are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$100 civil penalty
Second	\$250 civil penalty
Third	\$500 civil penalty
Fourth	\$1,000 civil penalty
Fifth	\$2,500 civil penalty
Sixth	\$5,000 civil penalty
Seventh	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

32.11(5) *Occupation violations.*

a. If no serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$500 civil penalty
Second	\$1,500 civil penalty
Third	\$2,500 civil penalty
Fourth	\$5,000 civil penalty
Fifth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

b. If a nonfatal but serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$2,500 civil penalty
Second	\$5,000 civil penalty
Each additional instance	\$10,000 civil penalty

c. If a fatality results from the work, the civil penalty for allowing or permitting a child to perform prohibited work is \$10,000 for each instance.

32.11(6) *Penalty reduction factors.* Except for violations related to the death of a child while working, the labor commissioner shall reduce the penalty calculated pursuant to subrules 32.11(1) through 32.11(5) by the appropriate penalty reduction percentages set forth in this subrule. However, if the labor commissioner requests information relevant to the penalty assessment and the employer does not provide responsive information, the labor commissioner shall not reduce the penalty.

a. Penalty reduction for size of business. The labor commissioner shall reduce a penalty by 25 percent if the employer has 25 or fewer employees. The labor commissioner shall reduce the penalty

amount by 15 percent if the employer has 26 to 100 employees. The labor commissioner shall reduce the penalty amount by 5 percent if the employer has 101 to 250 employees.

b. Penalty reduction for good faith. The labor commissioner may reduce a penalty by 15 percent based upon evidence that the employer made a good faith attempt to comply with the requirements. If at any time the labor commissioner warned an employer in writing about a prohibited practice and a civil penalty is being assessed against the same employer for repeating the practice, the labor commissioner shall not reduce the penalty based on good faith.

c. Penalty reduction for history. The labor commissioner shall reduce a penalty by 10 percent if the labor commissioner has not assessed a civil penalty under this chapter within the past five years. If the labor commissioner has assessed a civil penalty under this chapter in the past five years but the civil penalty has not reached judicial or administrative finality, the civil penalty shall be reduced by 10 percent.

This rule is intended to implement Iowa Code section 92.22 as amended by 2009 Iowa Acts, House File 618.

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